

# THE HUMAN RIGHTS SITUATION OF LGBT PEOPLE

Annual Review  
Armenia 2014



Annual Review: The Human Rights Situation of LGBT People in Armenia, 2014

Prepared in Armenia (May, 2015)

by Public Information and Need of Knowledge NGO  
with the financial support of Sigrid Rausing Trust

## Introduction

Discrimination towards the LGBT community in Armenia continues to be widespread, as the state fails to undertake any actions to reduce the negative attitude towards the LGBT community and to protect their human rights. Rather than promote equality, the leading political party representatives and media affiliated with authorities continue to spread hate speech towards LGBT people, strengthening the environment of impunity in the country.

The absence of anti-discrimination legislation and accountability mechanisms for discrimination cases greatly contributes to the violation of human rights of LGBT people; with this, the lack of implementation for the existing legislation also increases the vulnerability of LGBT people.

Furthermore, the absence of legal mechanisms and any general policy to combat discrimination foster the improper investigation and failure to qualification and hold perpetrators accountable in crimes against LGBT people as hate crimes based on the sexual orientation and gender identity of a person are not prosecuted by Armenian legislation.

The absence of legislation prohibiting hate speech against LGBT people has further enabled government officials, state authorities and mass media to perpetuate hate speech within the context of freedom of expression.

According to Article 14 of the Constitution of the Republic of Armenia, the state is obliged to respect and protect the dignity of individuals. Article 14.1 of the Constitution states that discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances shall be prohibited.

In 2014 the level of hate speech against LGBT people increased, especially after Austria's victory at The Eurovision Song Contest by Conchita Wurst, a female-identifying character that performs with a beard and wearing dresses. Most of Armenian society, as well as state and show-business figures began to berate the Austrian singer, which later grew into anti-LGBT marches and the persecution of LGBT human rights defenders in Armenia.

For the most part, LGBT people avoid addressing their issues to state authorities and rely on the support of civil society organizations.

This report summarizes reported and documented cases of human rights violations during 2014 reported to Public Information and Need of Knowledge NGO (better known as PINK Armenia), records of interviews with LGBT people and data obtained from court cases, internet sources and studies of other reports. In 2014, 44 people reported to PINK Armenia human rights abuses, all of which were in a way connected to their sexual orientation and/or gender orientation. The report presents human rights violations against LGBT people by the state, abuses by 3rd party persons and the state's failure to establish equal opportunities for everyone.

The data on human rights violations of LGBT people is presented in the report in the following structure:

1. The basic human rights provisions that have been violated with regards to documented cases, along with the constitutional provision and legislative regulations for the corresponding rights.
2. General description of specific documented cases.



The report is concluded with specific recommendations targeted at state authorities, mass media, and regional and international organizations, the implementation of which will contribute to the creation of a safer environment for LGBT people, such that LGBT people can become full members of Armenian society, able to exercise their human rights and freedoms effectively.

# 1. Obligation to Respect

## 1.1. Right to Freedom from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

*No one shall be subjected to torture, as well as to inhuman or degrading treatment or punishment. Arrested, detained or incarcerated persons shall be entitled to human treatment and respect of dignity.*<sup>1</sup>

*Article 17, Constitution of RA*

The term “torture” means “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them, or a third person, information or a confession, punishing them for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.”<sup>2</sup>

Freedom from torture and ill-treatment is an absolute right and is not subject to any restriction.<sup>3</sup> In order for ill-treatment to result in a violation of the right noted above, it is necessary for the perpetrator to achieve a minimum level of severity. The specific circumstances of the case such as the nature of the treatment, the context in which it had occurred, its duration, the physical and psychological effects and, in some cases, the person’s age, sex and state of health should also be considered.<sup>4</sup>

It is necessary to distinguish torture from inhuman treatment or degrading treatment, where torture is the intentional damage inflicted on the person, which caused a very serious and cruel suffering, whereas degrading treatment can be considered the attitude that causes a person feelings of fear, threats or humiliation<sup>5</sup> that reduce the role or authority of a person, the human dignity or makes a person act against his or her will or conscience.<sup>6</sup> In some cases, discrimination, threats based on sexual orientation or gender identity also qualify as degrading treatment.<sup>7</sup> In these cases, there is no need for the intent of the state to be proven for the violation of a person’s right to freedom from inhuman or degrading treatment to be established.<sup>8</sup>

### The Situation of LGBT Individuals in Penitentiary Institutions

The life of LGBT individuals is even more difficult in closed institutions (penitentiary institutions, the Armed forces), where apart from negative attitudes, they also face specific rules of “treatment”. For years this issue has been raised, but alas the situation remains the same.

<sup>1</sup> Article 17 of the Constitution of the RA (as amended), adopted on 27.11.2005.

<sup>2</sup> Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN, 1984

<sup>3</sup> Pretty VS. The United Kingdom (Application no. 2346/02) decision, §49

<sup>4</sup> Price VS. The United Kingdom (Application no. 33394/96) decision, Costello-Roberts VS. the United Kingdom (Application no. 13134/87) decision, §30

<sup>5</sup> Aydin VS. Turkey (Application no. 23178/94) decision

<sup>6</sup> East African Asians (British Protected Persons) VS. The United Kingdom (Applications no. 4715/70 4783/71 4827/71) decision

<sup>7</sup> Smith and Grady VS. The United Kingdom (Applications no.33985/96 and 33986/96) decision

<sup>8</sup> Peers VS. Greece (Application no. 28524/95) decision and UN doc. no. A/56/156 “Question of torture and other cruel, inhuman or degrading treatment or punishment, Interim report of the Special Rapporteur”

The Group of Public Observers Conducting Public Monitoring of Penitentiary Institutions and Bodies of the Ministry of Justice of the Republic of Armenia (Prison Monitoring Group) has mentioned in their report of 2013, that the most vulnerable group in penitentiary institutions are homosexuals. They are often isolated from the rest of the convicts, and forced to complete degrading work, such as sewer, toilet and bathroom cleaning.<sup>9</sup>

## 1.2 Right of Respect for Private and Family Life

*Everyone shall have the right to respect for his private and family life.*

*The collection, maintenance, use or dissemination of any information about the person other than that stipulated by the law without the person's consent shall be prohibited. The use and dissemination of information relating to the person for purposes contravening the aims of their collection or not provided for by the law shall be prohibited.<sup>10</sup>*

*Article 23, Constitution of RA*

The right to respect for private and family life infers the person's right to be legally recognized before the law, as well as the right to privacy.<sup>11</sup> Accordingly, it obliges the state to respect person's defined sexual orientation and gender identity to ensure the proper implementation by each person of his right.<sup>12</sup>

"Private life" is a broad term: it includes the physical and psychological integrity of a person. In some cases, it includes the aspects of individuals' physical and social identity. Facts, such as a person's gender identification, name, sexual orientation and sexual life, should be considered within the context of protection of a person's right to private and family life.<sup>13</sup> The person's body is the most intimate part of his private life.<sup>14</sup>

The right to private and family life also includes the right to individual self-development, to establish and enable connections with other people,<sup>15</sup> the right for effective realization of interpersonal relations, and the right to have a safe environment within a community.<sup>16</sup>

### Cases Related to Military Service

On March 24th, "news.am" website published an article entitled "The soldier presented himself as homosexual to avoid military service."<sup>17</sup> According to the article, a soldier named Garnik M. lied about being homosexual to his commander and fellow soldiers. He was later moved to the psychiatric department of Yerevan Garrison Military Hospital of the Ministry of Defense. He was charged according to Article 363 of the Criminal Code of RA.

A similar case was reported to PINK Armenia. A criminal charge according to article 363 of the Criminal Code of RA, which criminalizes the simulation of sickness to unlawfully avoid

<sup>9</sup> Report of the monitoring group conducting public oversight in penitentiary institutions under the Ministry of Justice of the Republic of Armenia in 2013 (Armenian), page 15-16, [http://pmg.am/wp-content/uploads/2015/01/2013\\_report.pdf](http://pmg.am/wp-content/uploads/2015/01/2013_report.pdf)

<sup>10</sup> Article 23, paragraph 1, of the Constitution of the RA (as amended), adopted on 27.11.2005.

<sup>11</sup> Article 16 of the International Covenant on Civil and Political Rights, UN, 1966

<sup>12</sup> Article 16 and 17 of the International Covenant on Civil and Political Rights, UN, 1966 and Human Rights Committee General Comment 16

<sup>13</sup> Pretty VS. The United Kingdom (Application no. 2346/02) decision, §49

<sup>14</sup> Y.F. VS. Turkey (Application no. 24209/94)

<sup>15</sup> Y.F. VS. Turkey (Application no. 24209/94)

<sup>16</sup> Connors VS. The United Kingdom (Application no. 66746/01)

<sup>17</sup> The soldier presented himself as homosexual to avoid military service. Preliminary investigation, 26.03.2014 (Armenian), <http://news.am/arm/news/200784.html>



military service, was handed down to a person who had served for 4-5 months in the Armed Forces of RA. After finding out his sexual orientation at the Military Unit, he was sent to the local clinic and afterwards to the hospital in the city of Sisian, where he was examined; he was found to be lying about his sexual orientation and was concluded not to be homosexual.

The Ministry of Defense of RA, classifying homosexuality as a mental illness, does not conscript homosexuals to compulsory military service, if their sexual orientation becomes known before the conscription. A case was reported to PINK Armenia when a person was not issued a driver's license after being declared unfit for military service, as he was diagnosed as being "mentally ill" due to his sexual orientation.

In another reported case, a soldier was exempted from military service after six months of serving when his sexual orientation became known in the Military Unit where he was serving. A village elder, who learned about the person's sexual orientation from the military commission, informed the soldier's father about why his son was exempted from the service.

Another case was reported to PINK Armenia about how a representative from the military commission informed his neighbour that the son is homosexual and was exempted from military service on the ground of his sexual orientation.

An employee of PINK Armenia was harassed and threatened for intervening in a similar case to the ones mentioned above. The soldier turned to PINK because the military unit revealed his homosexual identity, for which he was subjected to physical and psychological violence and pressure. The organization had advised the victim to notify the commanders of his military unit.

For safety reasons, commanders of the military unit moved him to another location to continue the service, and informed the young man's parents about what had happened and provided them with PINK Armenia's hotline number. As a result, the parents were continually calling and abusing PINK Armenia's employee, accusing the organization of being the reason that their son became homosexual. The young man's father said: "I am a freedom fighter and I got a medal by the President for killing a human. Tell me your address so I can kill you – one human more, one human less."

Following these events, PINK Armenia's lawyer contacted the family members of the man and explained the situation. As a result, the threats stopped thereafter, and the man completed his service and returned home.

### 1.3. Right to Access to Justice and an Effective Remedy

*Everyone shall be entitled to effective legal remedies to protect his/her rights and freedoms before judicial as well as other public bodies.<sup>18</sup>*

*Article 18, Constitution of RA*

Access to justice and the right to an effective remedy imply that a person can restore his/her rights and legitimate interests if violated. This means that a specific legal provision providing protection should make it possible for the claim presented by a person to be carried forward.<sup>19</sup> The remedy should be "practical and effective" and its implementation should not be hindered by action or inaction of public authorities.<sup>20</sup> Protection measures should

<sup>18</sup> Article 18 of the Constitution of the RA (as amended), adopted on 27.11.2005

<sup>19</sup> Kudla VS. Poland (Application no. 30210/96) decision

<sup>20</sup> Aksoy VS. Turkey (Application no. 21987/93) decision

be effective and should be available in a manner prescribed by law as well as in practice.<sup>21</sup> The state has an obligation to ensure greater access to justice for people who are more vulnerable in terms of protection.<sup>22</sup> When a human rights violation takes place because of the sexual orientation and/or gender identity of a person, the state should ensure efficient, prompt and impartial investigation of such incidents, and aggravate the circumstances of the crime as a criminal act committed on the grounds of hate.<sup>23</sup>

## **The Attitude of Police towards LGBT People**

### **The Case of Transgender Person L. K.**

In 2014, a transgender person named K. She was attacked and beaten by five people on Sakharov Square. She says she called the police, but the police stated that she was a prostitute and should be fined for that. The actual report on physical abuse was never investigated.

K. was recognized on the streets after participating in “Yerevan Talks” program of the “Arm-news” TV channel.<sup>24</sup> She says that, for security reasons, she was originally offered to wear a wig, which would conceal her face. But when starting the program they requested her to take off the wig, declaring it inappropriate for the program. The other 5 participants of the program criticized K., offered medical treatment and called on fighting against such a phenomenon.

K. stated that after the TV program people were recognizing and cursing at her in the streets. She completely lost contact with her family. Her sister, with whom she was living, expelled her from her house, after K. revealed her identity to her family. According to K., the director fired her from the restaurant where she was working because customers knew her and it harmed their business. K. also stated that she was not paid her salary for her final workday.

### **Cases Documented by PINK Armenia Related Failure of the Police to Act on Reports Submitted to Them**

According to an incident documented by PINK Armenia, a transgender person was the victim of an assault and battery by two female sex-workers in Children’s Park (Komaygi) area, and later went to a police station to report the attack. The other two women also reported the physical attack. Because of a lack of evidence, a criminal case was initiated against the transgender person according to Part 1 of Article 333 of the Criminal Code, i.e. false crime reporting, which was later discontinued. She claims that the attitude towards her was because of her gender identity, as well as because of the fact that police officers knew her and the activities that she is involved with, serving a basis for the criminal case to be solved against her interests.

According to another case, a person reported to police that his friend did not want to pay back money which he had borrowed from him. Because of the lack of evidence to support the report, a criminal case was initiated against him on the same grounds noted above. The person believes that the attitude of police officers is based on the ground of his sexual orientation which the police knew of. He believes that the differentiated treatment of police officers was the reason for a criminal case to be initiated against him.

<sup>21</sup> Kudla VS. Poland (Application no. 30210/96) decision

<sup>22</sup> Aydin VS. Turkey (Application no. 23178/94) decision

<sup>23</sup> Recommendation of the European Council CM/Rec(2010)5 - Combating discrimination on the grounds of sexual orientation or gender identity

<sup>24</sup> “Yerevan Talks”, Armnews TV channel (Armenian), <https://youtu.be/gXigNRgOAKs>



## 1.4. Freedom of Expression and the Prohibition of Hate Speech

*Everyone shall be obliged to honour the Constitutions and laws, to respect the rights, freedoms and dignity of others.*

*The exercise of the rights and freedoms with the purpose of overthrow of the constitutional order, incitement to national, racial and religious hatred, propaganda of violence or warfare shall be prohibited.<sup>25</sup>*

*Article 47, Constitution of RA*

Freedom of speech, as one of the pillars of democratic society, includes speech of any format and content, including the right to freely express one's gender identity, which includes ideas, opinions and information regarding the person's identity.<sup>26</sup>

Freedom of speech is not an absolute right and is subject to certain limitations.<sup>27</sup> It includes the freedom to express opinions and ideas, but at the same its defined responsibility is to avoid such statements that may insult other people and violate their rights.<sup>28</sup> In particular, freedom of speech does not infer freedom to promote hate speech.<sup>29</sup>

The term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other form of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.<sup>30</sup>

### **The Negative Attitude of State Officials towards LGBT People**

#### **The Statement of MP Hayk Babukhanyan**

The ruling Republican Faction members, who form the majority of the National Assembly, criticized Human Rights Defender's report on "Human Rights Defender's activities and the violation of human rights and fundamental freedoms in Armenia during 2013" because it also includes human rights violations of LGBT people.

Hayk Babukhanyan, a member of the Republican Faction of Armenia (RFA), condemned the Human Rights Defender of Armenia, Karen Andriasyan, for cooperating with organizations that protect the human rights of LGBT people.<sup>31</sup> In his speech he referred to Conchita Wurst, the winner of Eurovision Song Contest in 2014, saying that she disgusts him - "We cannot support you in areas such as, for example, a memorandum of understanding that you have signed with organizations involved in protection of gay, bisexual, transgender persons rights, signed on July 4, 2011 in Tsakhkadzor. These organizations were just chasing the girls, whose names are Inga and Anush Arshakyan [female singers who were involved in Eurovision 2014 Armenia's national jury. Their case is presented below], only for the fact that they allowed themselves to say that they are disgusted by Conchita. I am disgusted by Conchita, too." said Babukhanyan.

<sup>25</sup> Article 47 of the Constitution of the RA (as amended), adopted on 27.11.2005

<sup>26</sup> Smith and Grady VS. The United Kingdom (Applications no. 33985/96 and 33986/96) decision

<sup>27</sup> Human Rights Committee General Comment 34

<sup>28</sup> Erbakan VS. Turkey (Application no. 59405/00) decision

<sup>29</sup> Human Rights Committee General Comment 11

<sup>30</sup> Recommendation No. R (97) 20 of council of Europe Committee of Ministers on "Hate Speech" (adopted by the Committee of Ministers on 30 October 1997, at the 607th Meeting of the Minister's Deputies)

<sup>31</sup> Hayk Babukhyan, a member of the Republican Faction of Armenia, condemned the ombudsman for signing a Memorandum of Understanding with the PINK Armenia (Armenian), <http://bit.ly/1JjWffS>

On 4 July, 2011 the Human Rights Defender Karen Andriasyan had signed a Memorandum of Understanding with the president of “Public Information and Need of Knowledge” NGO, Mamikon Hovsepian. Babukhanyan was referring to said memorandum.

#### **The Statement of MP Vahram Baghdasaryan**

MP Vahram Baghdasaryan of RFA also mentioned Conchita Wurst in his statement of criticism against the Human Rights Defender’s report.<sup>32</sup>

“Once again, I call upon all our colleagues to try not to use the rostrum of Armenian Parliament for praising Conchita”, said Baghdasaryan.

#### **The Statement of MP Hakob Hakobyan**

Another MP of RFA, Hakob Hakobyan, gave an interview to the “7or.am” online newspaper,<sup>33</sup> commenting on Conchita’s performance at Eurovision and called to fight against such phenomena while calling her an evil human. “This phenomenon must be fought more clearly than we do now. We should fight it with the power of law and morals. This is not human rights, this is a violation of human rights, and violation of human values” said Hakobyan.

#### **The Interview of MP Hovhannes Sahakyan**

The president of the Standing Committee on State and Legal Affairs of the National Assembly, the Deputy of the Republican Faction of Armenia Hovhannes Sahakyan, as an answer to the question by “LGBTnews.am” on his attitude towards LGBT people is, said:<sup>34</sup>

“As the President of the Standing Committee on State and Legal Affairs of the National Assembly, I believe that all people should be protected here. But as an Armenian, I reject and do not accept such acts, because we are a small nation, we are a country at war, and all that affects our society’s temper, as well as future activities. I would also recommend you not to stimulate the development of such phenomena through your propaganda.”



<sup>32</sup> The Deputies keep mentioning ConchitaWurst in their speeches. The ombudsman defends with the Armenian Apostolic Church (Armenian), <http://bit.ly/1PZXeHv>

<sup>33</sup> The National Assembly’s Deputy about Conchita: “You caw, if you get into a flock of crows” (Armenian), <http://www.7or.am/am/news/view/68020/>

<sup>34</sup> The president of the Standing Committee on State and Legal Affairs of the National Assembly has a bifurcate approach towards the LGBT community (Armenian), <http://bit.ly/1RG3sJS>

## 2. Obligation to Protect

### 2.1 Right to Life

*Everyone shall have a right to life. No one shall be condemned to the death penalty or executed.*<sup>35</sup>

*Article 15, Constitution of RA*

The right to life is fundamental, enshrined in the Constitution of the RA. The right to life infers the inalienable right of every person to live. It includes a wider range of legal relationships, more than just the right to “be alive;” particularly it infers the obligation of the state to undertake all the necessary measures possible to prevent any interference that may endanger a person’s life.<sup>36</sup> The state must not only refrain from direct interference with the exercise of the right to life, but also it must create effective legal mechanisms to prevent interferences with one’s right to life, as well as to ensure proper investigation<sup>37</sup> if an interference already occurred. Violations of the right to life can be seen also in cases when the state does not counteract the factors that endanger the life of an individual,<sup>38</sup> which means that the violation of the right to life also includes cases when there is no death, e.g. death threats.<sup>39</sup>

#### Threats

PINK Armenia’s psychologist received threats from the parent of one of her visitors when the latter called to figure out why her son was visiting her. Receiving no response from the psychologist about details of the visit, she threatened the psychologist to find her and her family and cause problems for them.

PINK Armenia documented a case when a person received death threats and threats of harm when his partner’s family learnt of his sexual orientation and their relationship.

#### Hate Crime (Bias Motivated)

Since the state does not create an environment in which society would normally accept LGBT people, LGBT people are hiding their identity from other people, which is often used against them as a form of blackmail. There are cases when LGBT people receive threats upon revealing their sexual orientation or gender identity or they face violence to extort money or other goods from them for the same reason.

For example, according to a case documented by PINK Armenia, a person reported that he was harassed and money was demanded of him or his sexual orientation would be publicly revealed. In conjunction with this he was deprived of his liberty by a group of men, who kept him in a garage and threatened him with weapons and ammunition. The victim did not want to start a case in his name.

In another case a person reported to PINK an act of physical violence against him. The

<sup>35</sup> Article 15 of the Constitution of the RA (as amended), adopted on 27.11.2005.

<sup>36</sup> Human Rights Committee General Comment 6 and ICCPR article 6, Right to life

<sup>37</sup> L.C.B. VS.The United Kingdom (Application no. 23413/94) decision and Osman VS. The United Kingdom (Application no. 23452/94)

<sup>38</sup> L.C.B. VS.The United Kingdom (Application no. 23413/94) decision, §36 and Budayeva and Others VS. Russia (Applications no.15339/02, 21166/02, 20058/02, 11673/02 and 15343/02) decision, §146

<sup>39</sup> Branko Tomasicand Others VS.Croatia (Application no. 46598/06) decision and Dink VS. Turkey (Application no. 2668/07) decision

unidentified men beat him for a “confession” about his sexual orientation. The victim did not want to contact the police, because he did not want the bias of the violence to be revealed.

In another case, an MSM (man who has sex with men) person met a man through an online social media website and invited to him to his home. The man who arrived tied the person and threatened him with a knife, then grabbed his phone and computer and ran away. A criminal case was initiated about the incident. After learning the victim’s “status,” the investigatory bodies showed indifference.

#### **Accusations of Criminal Nature Made during “ATV” Channel’s Broadcast**

During a TV program called “Semi-open windows” running on “A TV” channel, the chair of United Youth League, Sevak Hovhannisyan, announced that a singer named H.H. raped a 16-year-old boy.<sup>40</sup> A video was shown during the program, where H.’s face was recognizable. A criminal case was initiated, but soon discontinued due to lack of evidence from Sevak Hovhannisyan. H. stated that right after the program the condition of him and his family, particularly that his father, mother and sister, deteriorated. He was fired from his job, but employment was restored with the interference of lawyer as soon as the criminal case was discontinued. However, H. had to quit because of health problems. H. says that some people tried to beat him in the streets as others threw written threats at the entrance to his home. He was unable to leave his house for several months, afraid of the death threats he received. H. initiated a civil lawsuit against Hovhannisyan on the basis of damage to honour and dignity. “A TV” channel is involved in judicial proceedings as a third party.

#### **Attitude towards LGBT People in their Families**

There is a negative attitude towards LGBT people in their families. During 2014, six cases were reported to PINK Armenia in which a person living with parents or relatives was expelled from their home when their sexual orientation or gender identity became known.

## **2.2. Right to Freedom of Expression. Prohibition of Hate Speech. Right to be Free from Discrimination**

The prohibition of hate speech and intolerance obliges the state not only to refrain from such speech, but also infers the duty to take appropriate measures to discourage such speech by third parties.<sup>41</sup> In this regard, the state has an obligation to undertake legislative and other measures to prevent the promotion of intolerance and hatred in the various ways and platforms that it occurs.

In 2013, the President of Armenia, Serzh Sargsyan, while speaking at the Parliamentary Assembly of the Council of Europe, called on the Council to combat hate speech and its manifestations. The president was speaking in the context of inter-ethnic hatred, but according to Resolution 97 (20) of the Council of Europe’s Committee of Ministers, hate speech is defined in the following way: the term “hatred” must be understood as covering all forms of expressing the phenomenon that spreads; incites; promotes or justifies racial; xenophobic; anti-Semitic and other forms of hatred based on intolerance, including intolerance of minorities, immigrants and persons of immigrant origins; discrimination and hostility expressed by aggressive nationalism and ethnocentrism.

Hate propaganda is defined as being directed against a person or a group of people, including LGBT people.

<sup>40</sup> “Semi-open windows”, ATV channel (Armenian), 06.05.2014, <https://youtu.be/t4-M2M0YHD8>

<sup>41</sup> Ozgur Gundem VS. Turkey (Application no. 23144/93) decision

Hate speech on Armenian television is a common phenomenon. TV celebrities, broadcasters and journalists demonstrate their intolerance towards LGBT people with impunity and openly present their homophobic stance with glory.

### The Case of “X Factor” TV Show Participant Sevak Kirakosyan

On May 17, 2014, on International Day Against Homophobia and Transphobia, Sevak Kirakosyan, a participant to “X Factor” music contest running on “Shant” TV channel, devoted his performance to all victims of homophobia and transphobia, which was followed by jury members’ hostile expressions.<sup>42</sup> Jury member Emma Bejanyan (Emmy) said: “Do you see, I was right, I’ve seen him on YouTube, he went to gay protests”. Andranik Hovnanian (Andre), the other Member responded: “Conchita, what you have done to this country”. The other member Garik Papoyan said: “What an impertinent spirit!”, and Andre responded: “That’s the way you should talk to them – not this nice!” Besides, in amateur recordings made by the audience, the speech of Garik Papoyan is seen, which was cut from the program.” I am also joining the struggle, but from the side of homophobes.”<sup>43</sup> Sevak asked whether he was supporting violence, Papoyan replied “Yes, yes”. The fourth member of the jury Yegor Glumov describes himself as “воинствующий гомофоб” (militant homophobe) in his autobiography in the program’s website.<sup>44</sup>

After the video described above was uploaded to the internet, many users addressed Sevak Kirakosyan with the most offensive expressions and cursing statements in Armenian. Many users even accused “Shant” TV of allowing the “propaganda of homosexuality”.

“Sarkavagagirq.net” published an article on their web-site against Sevak Kirakosyan, with his picture and a posture with text “Wanted dead or alive”.<sup>45</sup>

### The Statements of Singer Aram MP3

The representative of Armenia at the Eurovision Song Contest 2014 Aram Sargsyan (Aram Mp3) answered to the question of the broadcaster at Armenian Public TV, which was “What do you think of the orientation of the bearded lady participant (referring to the Austrian representative Conchita Wurst) “. He answered: “Not normal, inadequate. But it seems to me, we can do so that Conchita chooses if he is a boy or a girl”.<sup>46</sup> Later at a press conference, Aram MP3 said that his appearance on the same stage with Wurst was quite a severe experience “because when I get to Komaygi (a park known as a gathering place for transvestite people) I drive a little faster, in this case we need to overcome this psychological problem”.<sup>47</sup>

During an online Facebook conference organised by the Liberty radio station, Aram claimed that he meant it as a joke, but acknowledged that such phenomenon is not acceptable for him.<sup>48</sup> “I answered jokingly that it was difficult for me to get on the same stage with her. I replied frankly. It will be difficult for me because I do not live that life and despite the fact how far the world has gone forward or backwards, it’s a topic that is unacceptable to me.”

Aram expressed regret for his actions in an interview in Denmark, but after returning back another representative of the Armenian team Garik Papoyan said in an interview for News.am that there was a need for “qyart” people (narrow-minded people) in Denmark, when middle-sex things appeared there.<sup>49</sup>

<sup>42</sup> “X-Factor” 3 hearings 08, Sevak Kirakosyan, Shant TV (Armenian), <https://youtu.be/blQO3R6qFMI>

<sup>43</sup> “Let’s go”, Sevak Kirakosyan’s film, [https://youtu.be/sklC2YcF\\_4o](https://youtu.be/sklC2YcF_4o)

<sup>44</sup> Jury member Yegor Glumov (Armenian), <http://x-factor.shanttv.com/juri/view/glumov.html>

<sup>45</sup> Dedicated to the victims of homophobia (Armenian), [www.sarkavagagirq.net/2014/06/homofobia.html](http://www.sarkavagagirq.net/2014/06/homofobia.html)

<sup>46</sup> Come and see (Armenian), <https://youtu.be/ima2kNhoVDs>

<sup>47</sup> Aram MP3 about the transvestite participant (Armenian), <https://youtu.be/4rLpY2qw3gg>

<sup>48</sup> Facebook conference with Aram MP3 (Armenian), <https://youtu.be/9muAEb4BK6k>



### **The Statements of Singers Inga and Anush Arshakyans**

In the interview for Aravot.am, the members of Armenian National Jury of Eurovision 2014 Inga and Anush Arshakyans said they gave the lowest points for the representative of Austria, Conchita Wurst, because of their deep antipathy. “She only generated antipathy. And I am shocked that Conchita got the 2nd place by the SMS voting. I do not know who was voting, but I do not think that our whole nation collectively voted in favour of Conchita (...) Such things create antipathy as mentally ill people do” she said.

Journalist Hripsime Jebejyan also added that when asking Inga and Anush about Conchita their facial expressions immediately changed, and they disgustingly crossed themselves with their hands.

Later on the same day, during a program of “Kentron” TV channel, they denied that they had ever said such things, claiming that the journalist misrepresented and distorted what had occurred.

Afterwards, “Aravot.am” newspaper published the recording of the interview, which proved, the authenticity of the journalist’s article.

Later during a Facebook press conference organized by “Azatutyun” radio station, Anush Arshakyan expressed her apologies saying: “My negative rating was only concerning the character of Conchita Wurst (...)”<sup>51</sup> And if some people are offended by what was said, I apologize, I did not mean to offend either transvestites or sexual minorities, or even more - mentally ill people”.

### **The Statements of Politician Robert Aharonyan**

Robert Aharonyan, the head of Armenian Socialist Movement who was running for the presidential elections of 2013, but was left out of the campaign due to not paying bail, ordered the activists who came to assist a female victim of domestic violence at the Gavar court, to leave the country. “F\* off to your country. Why have you come to disturb Armenia?” He further stated, “I stand for the family, not faggots!”<sup>52</sup>

### **The Press Conference of Public figure Khachik Stamboltsyan**

On January 30, 2014, the public and political figure Khachik Stamboltsyan initiated a press conference against Nazik Armenakyan’s photography book about transvestites named “The Stamp of Solitude,” calling on to condemn the authors of the book and to immediately remove it from the market.<sup>53</sup>

## **2.3 Right to Equality before the Law and Equal Protection**

The right to equal protection entails not only the prohibition of direct interference by the state, but also its obligation to protect from possible interference by third parties. The state’s indifference to such interference is unacceptable because it would mean that prejudice and discrimination towards some minority groups becomes justified and acceptable.<sup>54</sup> The proper implementation of this right means the obligation of the state to undertake necessary leg-

<sup>49</sup> Garik Papoyan: I started missing “qyartu” mentality when a phenomenon of a middle sex appeared on the stage (Armenian), <http://goo.gl/JbvdQB>

<sup>50</sup> Anush Arshakyan is disgusted by Conchita. “I have put her in last place, out of the antipathy” (Armenian), <http://www.aravot.am/2014/05/14/460287/>

<sup>51</sup> Facebook conference with Inga and Anush Arshakyans. Azatutyun radio station (Armenian), <https://youtu.be/Jh4LkrSgidA>

<sup>52</sup> Robert Aharonyan: “F\* off to your country” (Armenian), [https://youtu.be/p-i\\_APkXmIc](https://youtu.be/p-i_APkXmIc)

<sup>53</sup> “The Stamp of Lonliness” promotes homosexuality. The authors of the book must be condemned (Armenian), <http://goo.gl/uhr8iV>



islative, administrative and other measures, to ensure the equality of persons both de facto and de jure.<sup>55</sup> Moreover, the principle of equality does not call for similar treatment in similar conditions, but means that the state must act where it is necessary to eliminate or reduce conditions that have given birth to or promoted discrimination against a particular group.<sup>56</sup>

### The Lawsuit against “Iravunk” Newspaper

After the press conference by Inga and Anush Arshakyan on Facebook, “Iravunk” newspaper published an article entitled “They serve the interests of the international homosexual lobby: The black list of enemies of state and nation”.<sup>57</sup> In the article signed in the name of the editor of the newspaper Hohnannes Galajyan, a list of 60 individuals was presented, with external links to their Facebook profiles, where the editor called upon readers to: not greet these people nor socialize with them, to express zero tolerance towards them, not to hire them for jobs, as well as named them enemies of the state and nation and “zombies”. Several people mentioned in the list of “Iravunk” requested that editors refute the article. But instead, the newspaper published another article with the following headline: “And they still dare to claim a refutation?” where they continued expressing offensive statements. They also placed an offensive video under an article entitled “About faggots” by the “antiVirus” program.<sup>58</sup>

Sixteen citizens mentioned in the list initiated a joint civil lawsuit against “Iravunk Media” Ltd. and Hovhannes Galajyan on the basis of damage to honour and dignity. On October 25, 2014, several days before the verdict of the court, the President of the Republic of Armenia, Serzh Sargsyan, participated in an event dedicated to the 25th anniversary of “Iravunk” newspaper, during which he granted a “Movses Khorenatsi” medal to the Deputy of the Republican Fraction of Armenia and who is the President of “Iravunk” newspaper’s editorial board, Hayk Babukhanyan. The director of the newspaper, Gegham Grigoryan, and editor Hovhannes Galajyan were awarded Medals of Honor.<sup>59</sup>



Five days later, on October 30, 2014, the Court of General Jurisdiction of Kentron and Nork-Marash Administrative Districts denied the claim of the 16 plaintiffs and obliged them to pay 150 thousand AMD to the newspaper, as a reimbursement for the legal services provided to the respondent and confiscated the same amount also in favour of Hovhannes Galajyan.

The same article served a basis for other lawsuits against “Iravunk” newspaper initiated separately by staff members of “New Generation” NGO and a citizen of Islamic Republic of Iran, Romik Danial.

“New Generation” NGO is also involved as a plaintiff in another judicial proceeding against “Iravunk”, after an article was published entitled “When grant sucker defenders of ‘homo-addicts’ are supported by the state”.<sup>60</sup>

<sup>54</sup> Members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others VS. Georgia (Application no. 71156/01) decision, §141

<sup>55</sup> Human Rights Committee General Comment 18, paragraph 6

<sup>56</sup> Human Rights Committee General Comment 18, paragraph 10

<sup>57</sup> They serve the interests of the international homosexual lobby (Armenian), <http://goo.gl/ivub1H>

<sup>58</sup> How dare they demand a denial? (Armenian), <http://goo.gl/NNU7WC>

<sup>59</sup> RA Serzh Sargsyan, on October 25, 2014, attended the event dedicated to the 25th anniversary of the Iravunk newspaper (Armenian), <http://armenpress.am/arm/news/781479/>

<sup>60</sup> When grantsucker defenders of homosexuals are supported by the state (Armenian), <https://ngngo.files.wordpress.com/2014/06/iravunq.jpg>, Iravunk newspaper N62

### 3. Obligation to Fulfill and to Create a Safe Environment

The extremely negative societal attitude towards LGBT people is evident in the research on constitutional amendments in RA,<sup>61</sup> developed by Advanced Public Research Group (APR Group) NGO in the frames of “Enhancing the role of civil society in political processes in Armenia” project. A vast majority of the population according to the survey would want to have a new constitution that would limit the rights of sexual minorities. 88% answered in favour of limiting the rights of sexual minorities, 8% did not favour any changes, and only 1% answered for having more rights and privileges.

In specific occasions, however, it is possible to witness a certain level of tolerance towards LGBT people. Within the frames of a program “Freedom of Speech: Ten questions to ten editors” implemented by Armenian Helsinki Association and the Independent Journalists’ Network press editors were interviewed on whether they are against homophobia. The interviews included editors from “Epress.am”, “168.am”, “iLur.am”, “1in.am”, “Aravot”, “Haykakan Zhamanak”, “Lragir.am”, “Hraparak” and “Hetq.am” newspapers.<sup>62</sup>

Seven of the interviewees answered that they are against homophobia. The editor of “168.am” newspaper Satik Seyranyan said that it is a very private topic, and the editor of “Haykakan Zhamanak” newspaper Hayk Gevorgyan noted that he is indifferent.



The editor of “tert.am” newspaper Suren Khachatryan, who got an official invitation to the program, asked for information to study the questions in advance in order to confer with the management “, but refused to answer to questions after becoming acquainted with them.

Only one representative of the state authorities has expressed support for LGBT people during 2014: The head of the International Department at the Ministry of Foreign Affairs of Armenia, Vahram Kazhoyan, publicly supported the UN “free and equal” initiative against homophobia and published his picture on Facebook holding a poster where it was written “No to homophobia. Hatred is not a family value”.<sup>63</sup> This fact could not go unnoticed by “Iravunk” newspaper, which afterwards demanded explanations from the Ministry of Foreign Affairs.<sup>64</sup>

<sup>61</sup> Enhancing the role of civil society in the political process in Armenia (Armenian), <http://goo.gl/taMJ7k>, page 11

<sup>62</sup> Freedom of Speech. Ten questions to 10 editors (Armenian), <https://youtu.be/e5aMZ3JqQxU>

<sup>63</sup> “No to homophobia” Vahram Kazhoyan joins Un’s initiative (Armenian), <http://www.1in.am/1438570.html>

<sup>64</sup> State official - homosexuality lobbyist? (Armenian), <http://goo.gl/jcrPxx>

## Conclusion

Public opinion toward LGBT people continues to be extremely negative. State authorities contribute to the formation and expansion of such opinion. LGBT people, as during previous years as well as in 2014, were subjected to discrimination in almost all spheres of life.

This environment of impunity is strengthening through non-implementation of the existing legislation, particularly non-recognition of the applicability of the existing legislation to LGBT people, as well as the absence of legal regulations such as the prohibition of discrimination on the grounds of sexual orientation and gender identity; not recognizing the crimes committed on the grounds of a person's sexual orientation and/or gender identity as bias motivated crimes; and lack of legislation prohibiting hate speech against LGBT people.

Speaking against LGBT people is regarded with high esteem and seen as patriotic, and the ones who try to protect their human rights, are nevertheless targeted. Violence, hate speech, threats against LGBT people form part of the national ideology. There is still a high risk for people who want to speak freely about their sexual orientation not to pose danger to their lives.

## Recommendations

### **To State Authorities:**

- ▼ To stop statements by state representatives that insult and incite discrimination and hatred towards LGBT people. To undertake appropriate measures to prevent such speech against LGBT people, and to bring to justice those individuals who perpetrated hate speech.
- ▼ To make a complete, objective and comprehensive investigation of human rights violations of LGBT people, by precluding a discriminatory and biased approach towards LGBT people in the investigatory bodies, and by ending the vicious practice of solving cases reported to those bodies to the detriment of the victim.
- ▼ To undertake appropriate measures to ensure the safety of LGBT people in closed institutions, to prevent cases of inhuman and degrading treatment against them and in cases when violation already happened, to properly investigate them.
- ▼ To undertake appropriate measures to prevent discrimination against LGBT people in state institutions, including through conducting trainings, awareness-raising activities and through other means among police and prosecution officers, judges and other public servants.
- ▼ To adopt a standalone, comprehensive legislation that would prevent discrimination, and would define civil, administrative and criminal liability for the latter, to ensure that the protection against discrimination includes also discrimination on the grounds of sexual orientation and gender identity.
- ▼ To review the existing legislation prohibiting hate speech, define the term "hate speech", to define liability for hate speech against persons with particular characteristics, including LGBT people.

- ▼ To review the existing legislation prohibiting hate crimes, particularly to define the factor of the committal of a crime on the basis of sexual orientation and / or gender identity of a person as a circumstance aggravating the crime and punishment.
- ▼ To promote the ideas of tolerance and equality among representatives of state authorities, particularly among the deputies of the National Assembly of RA, governmental and other officials.
- ▼ To promote the ideas of tolerance and equality in society, particularly to make public statements promoting tolerance and recognizing the fact that LGBT people are full members and citizens of Armenian society.

#### **To Mass Media:**

- ▼ To stop publishing materials that incite hatred and intolerance against LGBT people and to provide society with competent, ethically acceptable materials, which would show respect for human rights of LGBT people.
- ▼ To fairly represent any subject related to LGBT people based on internationally accepted scientific evidence and internationally accepted norms in order to refraining from enflaming hatred and intolerance in the society.

#### **To International and Regional Organizations:**

- ▼ To properly monitor the process of implementation of international obligations related to human rights of LGBT people which Republic of Armenia committed itself to realize.
- ▼ To make public statements in support of the importance and relevance of the protection of human rights of LGBT people in RA.
- ▼ In their reports to take into consideration and to refer to the status of violations of human rights of LGBT people addressed in this report.





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